

BRIAN MARCUS WILSON,)
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 Petitioner,) 2:13-cv-00461-JAD-NJK
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 vs.) **ORDER**
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 BRIAN E. WILLIAMS, SR., *et al.*,)
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 Respondents.)
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1. Request for Appointed Counsel

There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are

1 such that denial of counsel would amount to a denial of due process, and where the petitioner is a person
2 of such limited education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at
3 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970).

4 The petition on file in this action appears sufficiently clear in presenting the issues that petitioner
5 wishes to raise. Counsel is not justified at this time.

6 **2. Order to Show Cause that this Action was Timely Filed**

7 It appears from the petition that it was submitted outside the applicable limitations period and
8 may be subject to dismissal on that basis. The Antiterrorism and Effective Death Penalty Act (AEDPA)
9 imposes a one-year statute of limitations on the filing of federal habeas corpus petitions. 28 U.S.C. §
10 2244(d). The one-year time limitation can run from the date on which a petitioner's judgment becomes
11 final by conclusion of direct review, or the expiration of the time for seeking direct review. 28 U.S.C.
12 § 2244(d)(1)(A). Of course, a properly filed petition for state postconviction relief can toll the period
13 of limitations. 28 U.S.C. § 2244(d)(2).

14 According to the habeas petition, petitioner's judgment of conviction was entered on February
15 9, 2004. Petitioner did not file a direct appeal. He filed his first state habeas petition on October 18,
16 2005 and states that the Nevada Supreme Court affirmed the denial of the petition on July 10, 2006.
17 Remittitur issued August 4, 2006. Petitioner filed a second state habeas petition on January 7, 2010, and
18 the Nevada Supreme Court affirmed the denial of that petition as untimely on September 10, 2010. The
19 instant federal habeas petition was handed to a correctional officer for mailing on March 13, 2013. Thus
20 the federal petition was filed well beyond the one-year time limitation contained in the statute, which
21 would have run from the issuance of remittitur for the first state petition.

22 Petitioner may be entitled to equitable tolling of the one-year limitations period if he can
23 establish that he diligently pursued his right and some extraordinary circumstance stood in his way. *See*
24 *Calderon v. United States District Court (Beeler)*, 128 F.3d 1283, 1288 (9th Cir. 1997), *overruled in*
25 *part on other grounds, Calderon v. United States District Court (Kelly)*, 163 F.3d 530 (9th Cir. 1998);
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1 *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). The petitioner will be given the opportunity to show
2 that either the instant petition was not filed beyond the one-year statute of limitations, or that he is
3 entitled to equitable tolling of the time limitation.

4 **IT IS THEREFORE ORDERED** that petitioner's motion for appointment of counsel (Doc. 2)
5 is **DENIED**.

6 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** from the entry of this
7 Order **to show cause and file such proof** he may have to demonstrate that the petition for writ of habeas
8 corpus was timely filed within the one-year time limitation or that he is entitled to equitable tolling of
9 the time period.

10 **IT IS FURTHER ORDERED** that if petitioner is unable to demonstrate that the petition for writ
11 of habeas corpus was filed within the limitations period, the court will enter an order dismissing the
12 petition.

13 Dated this 15th day of October, 2013.

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16 UNITED STATES DISTRICT JUDGE
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